

A BILL FOR AN ACT

RELATING TO REAL ESTATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 421H-6, Hawaii Revised Statutes, is amended to read as follows:

"§421H-6 Arbitration of disputes. (a) At the request of any party, any dispute concerning or involving one or more stockholders and a limited-equity housing corporation, its board of directors, managing agent, or one or more other stockholders relating to the interpretation, application, or enforcement of this chapter or the corporation's charter of incorporation, bylaws, or administrative rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with ~~[the rules adopted by the real estate commission and the provisions of]~~ chapter ~~[658A; provided that]~~ 658 and the Condominium Property Regime Rules on Arbitration of Disputes of the American Arbitration Association ~~[shall be used until the commission adopts its rules]~~; provided ~~[further]~~ that where any arbitration rule conflicts with chapter ~~[658,]~~ 658A, chapter ~~[658]~~ 658A shall prevail; provided further that notwithstanding any rule

1 to the contrary, the arbitrator shall conduct the proceedings in a
2 manner which affords substantial justice to all parties; provided
3 further that the proceedings shall be concluded ninety days after
4 the commencement of the arbitration unless extended by mutual
5 consent of the parties involved and their counsel. The arbitrator
6 shall be bound by rules of substantive law and shall not be bound
7 by rules of evidence, whether or not set out by statute, except
8 for provisions relating to privileged communications. The
9 arbitrator shall permit discovery as provided for in the Hawaii
10 rules of civil procedure; provided that the arbitrator may
11 restrict the scope of such discovery for good cause to avoid
12 excessive delay and costs to the parties or the arbitrator may
13 refer any matter involving discovery to the circuit court for
14 disposition in accordance with the Hawaii rules of civil procedure
15 then in effect.

16 (b) Nothing in subsection (a) shall be interpreted to
17 mandate the arbitration of any dispute involving:

18 ~~[(1) The real estate commission,~~

19 ~~(2)]~~ (1) The mortgagee of a mortgage of record;

20 ~~[(3)]~~ (2) The developer, general contractor,

21 subcontractors, or design professionals for the

22 project; provided that when any person exempted by

1 this paragraph is also a stockholder, a director, or
2 managing agent, such person ~~[shall]~~, in those
3 capacities, shall be subject to ~~[the provisions of]~~
4 subsection (a);

5 ~~[(4)]~~ (3) Actions seeking equitable relief involving
6 threatened property damage or the health or safety of
7 stockholders or any other person;

8 ~~[(5)]~~ (4) Actions to collect assessments which are liens or
9 subject to foreclosure;

10 ~~[(6)]~~ (5) Personal injury claims; or

11 ~~[(7)]~~ (6) Actions for amounts in excess of \$2,500 against a
12 limited-equity housing corporation, a board of
13 directors, or one or more directors, officers, agents,
14 employees, or other persons, if insurance coverage
15 under a policy or policies procured by the limited-
16 equity housing corporation or its board of directors
17 would be unavailable because action by arbitration was
18 pursued."

19 SECTION 2. Section 467-1.6, Hawaii Revised Statutes, is
20 amended to read as follows:

"[f] §467-1.6 [f] Principal brokers. (a) The principal broker shall have direct management and supervision of the brokerage firm and its real estate licensees.

(b) The principal broker shall be responsible for:

(1) The client trust accounts, disbursements from those accounts, and the brokerage firm's accounting practices;

(2) The brokerage firm's records, contracts, and documents;

(3) All real estate contracts of the brokerage firm and its handling by the associated real estate salesperson;

(4) The proper handling of any commission application, real estate license application, or renewal application that the principal broker or the brokerage firm expressly agrees to handle on behalf of the applicant, including without limitation, verifying for completeness and appropriate fees, and mailing or delivering the appropriate documents to the commission by the required deadline;

(5) Developing policies and procedures for the brokerage firm concerning the handling of real estate

transactions and the conduct of the associated real estate licensees and other staff, including education and enforcement of the policies and procedures;

(6) Setting a policy on continuing education requirements for all associated real estate licensees in compliance with the statutory requirement;

(7) Ensuring that the licenses of all associated real estate licensees and the brokerage firm license are current and active;

(8) Establishing and maintaining a training program for all associated real estate licensees; and

(9) Ensuring that all associated real estate licensees are provided information and training on the latest amendments to real estate licensing laws and rules as well as other related laws and rules.

(c) The principal broker may delegate management and supervision duties to one or more brokers in charge subject to the principal broker's written policies and procedures. The principal broker shall be responsible for the education, enforcement, and records required of such policies and procedures. "

1 SECTION 3. Section 467-9.5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) No individual shall be eligible for the licensing
4 examination unless the individual is:

5 (1) A United States citizen ~~[of the]~~, a United States
6 national, or an alien ~~[who is]~~ authorized to work in
7 the United States, and of the age of majority; and

8 (2) Applying for:

9 (A) The real estate salesperson examination and has
10 satisfactorily completed a commission-approved
11 prelicensing course for real estate salesperson
12 candidates, which includes real estate
13 principles, or its equivalent as determined by
14 the commission; or

15 (B) The real estate broker examination and:

16 (i) ~~[Is currently licensed as a]~~ Holds a
17 current, unencumbered Hawaii real estate
18 salesperson~~[+]~~ license or a current,
19 unencumbered real estate salesperson or
20 broker license in another state or in a
21 jurisdiction recognized by the Association
22 of Real Estate License Law Officials, with

1 an equivalent real estate licensing law as
2 determined by the commission;

3 (ii) Has satisfactorily completed a commission-
4 approved prelicensing course for real estate
5 broker candidates, or its equivalent as
6 determined by the commission; and

7 (iii) Has experience as a full-time [~~state-~~
8 ~~licensed~~] Hawaii-licensed real estate
9 salesperson associated with a Hawaii-
10 licensed real estate broker for at least
11 three years of the five-year period
12 immediately prior to the submission of the
13 experience certification application and has
14 practical real estate salesperson
15 experience, as certified by the principal
16 broker [~~or~~], principal brokers, broker in
17 charge, or brokers in charge, as the case
18 may be, during the subject period. The
19 candidate shall secure commission approval
20 of the candidate's experience certification
21 application prior to the date of the
22 examination. Subject to commission

1 approval, a candidate may request a
2 determination of equivalency [~~for a portion~~
3 ~~of the experience requirement based on real~~
4 ~~estate license experience in another state,~~
5 ~~as determined by the commission.] for the
6 experience requirement based on real estate
7 salesperson license experience or a current,
8 unencumbered real estate broker license in
9 another state, or in a jurisdiction
10 recognized by the Association of Real Estate
11 License Law Officials, with an equivalent
12 real estate licensing law as determined by
13 the commission."~~

14 SECTION 4. Section 467-11.5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§467-11.5 Prerequisites for license renewal. (a) Prior to
17 the license renewal of a real estate broker or real estate
18 salesperson, the licensee shall provide the commission with proof
19 of having attended ten hours of continuing education or its
20 equivalent as determined by the commission during the two-year
21 period preceding the application for renewal. Failure to satisfy
22 the continuing education requirement by the license expiration

1 date shall result in the renewed license being automatically
2 placed on an "inactive" status.

3 (b) To reactivate a license which has been placed on an
4 "inactive" status, the licensee shall submit to the commission
5 proof of having satisfied the continuing education requirement of
6 this section, a complete application setting forth the information
7 as may be prescribed or required by the commission, and payment of
8 the proper fee.

9 (c) No license shall be renewed if the license trade name,
10 partnership, or corporation is not currently registered with the
11 department of commerce and consumer affairs.

12 (d) Upon submission of a renewal application, an individual
13 real estate licensee, who holds a current, unencumbered real
14 estate license in another state, or who holds a current,
15 unencumbered real estate license in a jurisdiction recognized by
16 the Association of Real Estate License Law Officials, with an
17 equivalent real estate licensing law as determined by the
18 commission, may request a determination of equivalency for the
19 elective course hours of the continuing education requirement.
20 The equivalency shall be based on the successful completion of the
21 continuing education requirements in the other state or
22 jurisdiction prior to submission of the renewal application.



1 Approval of the equivalency shall be subject to the real estate
2 licensee completing the commission-designated core course, as
3 determined by the commission."

4 SECTION 5. Section 514A-95, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§514A-95 Managing agents.** (a) Every managing agent shall:

7 (1) Be licensed as a real estate broker in compliance with
8 chapter 467 and the rules of the commission or be a
9 corporation authorized to do business under article 8
10 of chapter 412;

11 (2) Register with the commission prior to conducting
12 managing agent activity through approval of a
13 completed registration application, payment of fees,
14 and submission of any other additional information set
15 forth by the commission. The registration shall be
16 for a biennial period with termination on December 31
17 of an even-numbered year. The commission shall
18 prescribe a deadline date prior to the termination
19 date for the submission of a completed reregistration
20 application, payment of fees, and any other additional
21 information set forth by the commission. Any managing
22 agent who has not met the submission requirements by

1 the deadline date shall be considered a new applicant
2 for registration and subject to initial registration
3 requirements. The information required to be
4 submitted with any application shall include the name,
5 business address, phone number, and names of
6 association of apartment owners managed;

- 7 (3) Obtain and keep current a fidelity bond in an amount
8 equal to \$500 multiplied by the aggregate number of
9 apartments of the association of apartment owners
10 managed by the managing agent; provided that the
11 amount of the fidelity bond shall not be less than
12 \$20,000 nor greater than \$100,000. Upon request by
13 the commission, the managing agent shall provide
14 evidence of a current fidelity bond or a certification
15 statement from an insurance company authorized by the
16 insurance division of the department of commerce and
17 consumer affairs certifying that the fidelity bond is
18 in effect and meets the requirement of this section
19 and the rules adopted by the commission. The managing
20 agent shall permit only employees covered by the
21 fidelity bond to handle or have custody or control of
22 any association of apartment owners funds, except any

1 principals of the managing agent that cannot be
2 covered by the fidelity bond. The fidelity bond shall
3 protect the managing agent against the loss of any
4 association of apartment owners' moneys, securities,
5 or other properties caused by the fraudulent or
6 dishonest acts of employees of the managing agent.
7 Failure to obtain or maintain a fidelity bond in
8 compliance with this chapter and the rules adopted
9 pursuant thereto, including failure to provide
10 evidence of the fidelity bond coverage in a timely
11 manner to the commission, shall result in non-
12 registration or the automatic termination of the
13 registration, unless an approved exemption or a bond
14 alternative is presently maintained. A managing agent
15 who is unable to obtain a fidelity bond may seek an
16 exemption from the fidelity bond requirement from the
17 commission. The commission shall adopt rules
18 establishing the conditions and terms by which it may
19 grant an exemption or a bond alternative, or permit
20 deductibles;

21 (4) Act promptly and diligently to recover from the
22 fidelity bond, if the fraud or dishonesty of the

1 managing agent's employees causes a loss to an
2 association of apartment owners, and apply the
3 fidelity bond proceeds, if any, to reduce the
4 association of apartment owners' loss. If more than
5 one association of apartment owners suffers a loss,
6 the managing agent shall divide the proceeds among the
7 associations of apartment owners in proportion to each
8 association of apartment owners' loss. An association
9 of apartment owners may request a court order
10 requiring the managing agent to act promptly and
11 diligently to recover from the fidelity bond. If an
12 association of apartment owners cannot recover its
13 loss from the fidelity bond proceeds of the managing
14 agent, the association of apartment owners may recover
15 by court order from the real estate recovery fund
16 established under section 467-16, provided that:

17 (A) The loss is caused by the fraud,
18 misrepresentation, or deceit of the managing
19 agent or its employees;

20 (B) The managing agent is a licensed real estate
21 broker; and



1 (C) The association of apartment owners fulfills the
2 requirements of sections 467-16 and 467-18 and
3 any applicable rules of the commission;

4 (5) Pay a nonrefundable application fee and, upon
5 approval, an initial registration fee, and
6 subsequently pay a reregistration fee, as prescribed
7 by rules adopted by the director of commerce and
8 consumer affairs pursuant to chapter 91. A compliance
9 resolution fee shall also be paid pursuant to section
10 26-9(o) and the rules adopted pursuant thereto; and

11 (6) Report immediately in writing to the commission any
12 changes to the information contained on the
13 registration application or any other documents
14 provided for registration. Failure to do so may
15 result in termination of registration and subject the
16 managing agent to initial registration requirements.

17 (b) The commission may deny any registration or
18 reregistration application or terminate a registration without
19 hearing if the fidelity bond and its evidence fail to meet the
20 requirements of this chapter and the rules adopted pursuant
21 thereto.



1 (c) Every managing agent shall be considered a fiduciary
2 with respect to any property managed by that managing agent.

3 (d) The registration and fidelity bond requirements of this
4 section shall not apply to active real estate brokers in
5 compliance with and licensed under chapter 467. "

6 SECTION 6. Section 421H-5, Hawaii Revised Statutes, is
7 repealed.

8 ~~["§421H-5 Registration and administration requirements. (a)~~
9 ~~Limited equity housing cooperatives under this chapter shall be~~
10 ~~subject to regulation by the real estate commission.~~

11 ~~(b) Any law to the contrary notwithstanding, limited equity~~
12 ~~housing cooperatives under this chapter shall be subject to the~~
13 ~~same requirements, to the extent practicable, which now apply to~~
14 ~~condominium property regimes under part III of chapter 514A with~~
15 ~~regard to notice of intent to sell, questionnaires, fees,~~
16 ~~inspections, public reports, penalties, limitations of actions,~~
17 ~~and the powers of the real estate commission to conduct~~
18 ~~investigations, issue cease and desist orders, and obtain~~
19 ~~injunctions.~~

20 ~~(c) The real estate commission may adopt rules under~~
21 ~~chapter 91 to implement this chapter, including rules to limit~~
22 ~~or waive the applicability of certain requirements in subsection~~

~~(b) which could not fairly or reasonably be applied to~~
~~limited equity housing cooperatives already in existence on~~
~~July 1, 1987. "]~~

SECTION 7. Until such time as administrative rules are adopted, the applications for determinations of equivalency to the experience requirement and to the continuing education requirement each shall be assessed a \$25 nonrefundable application fee in addition to any other applicable fees.

9 SECTION 8. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 9. This Act shall take effect on July 1, 2002.

APPROVED BY THE
GOVERNOR ON

MAY 31 2002

